

CALIFORNIA ENERGY COMMISSION1516 NINTH STREET
SACRAMENTO, CA 95814-5512

State of California
Energy Resources Conservation and Development Commission

In the Matter of:)	Docket No. 99-AFC-2
)	
Application for Certification of)	STAFF PREHEARING CONFERENCE
the Three Mountain Power Project)	STATEMENT
_____)	

INTRODUCTION

On April 28, 2000, the Three Mountain Power Project Committee issued a Notice of Second Prehearing Conference, directing parties to file Prehearing Conference Statements on May 11, 2000. The Notice directs parties to specify their positions on a number of scheduling issues. This Prehearing Conference Statement responds to that Notice by addressing the identified issues.

ISSUESTopic Areas Ready to Proceed to Hearings

Noise, air quality, and public health are currently ready to proceed to hearings. However, with respect to air quality, there are several items that the Committee should note in establishing a final schedule for hearings in this case. First, the applicant did not provide either its wood stove replacement proposal or its road paving proposal until the May 10, 2000 workshop. Staff is in the process of reviewing both proposals. Before it can complete its testimony, however, staff will need to draft conditions of certification to ensure that the applicant's wood stove replacement proposal, which currently lacks specificity, provides the appropriate amount of emission reductions. In addition, several members of the public attending the May 10 workshop requested that staff review the several elements of the applicant's road paving proposal, including the traffic counts provided and the selection of roads to be re-paved. Finally, although the Final Determination of Compliance (FDOC) was due to be filed on May 8, 2000, the Shasta

County Air Quality Management District (District) stated that it will not complete the FDOC until the Energy Commission staff has had an opportunity to review the two proposals made at yesterday's workshop and indicated that its concerns are resolved. Staff has continued the May 10, workshop until 1:00 a.m. on May 15 to continue discussions on the applicant's proposals. Staff believes it can complete its review by early next week. In light of this situation, staff and the applicant agreed yesterday that a day-for-day slip of the schedule for staff's air quality testimony, tied to the issuance of the DOC, is appropriate. The parties therefore anticipate that the District will file the FDOC early next week, and that staff will file its final air quality testimony 16 days later.

Although staff believes that it can proceed to the scheduled hearings on air quality, we note that the United States Environmental Protection Agency (USEPA) has indicated that the District cannot properly issue an FDOC at this time. USEPA is responsible for consulting with the United States Fish and Wildlife Service (USF&WS) under Section 7 of the Endangered Species Act as result of its role in the Prevention of Significant Deterioration (PSD) permit. However, USEPA has not yet received the information from the Applicant that is necessary to initiate the consultation process. As the consultation process takes approximately 135 days from the time that USF&WS has sufficient data, USEPA may not find the FDOC to be valid until sometime in the late summer or early fall.

Staff notes that the Presiding Member's Proposed Decision in the Sunrise Cogeneration and Power Project proceeding includes a recommendation that the Commission not approve that project until USEPA's concerns with the FDOC issued for that project are resolved. Staff supports that recommendation, but believes that it is appropriate to proceed to hearings on air quality, as occurred in the Sunrise proceeding. Staff does note, however, that there is a somewhat greater risk in this case that the record on air quality will need to be re-opened once USEPA's concerns are resolved. In the Sunrise case, USEPA's conclusion about the validity of the FDOC is based on violations that have occurred at facilities owned by sister affiliates of the Sunrise project, and resolution of the violations is unlikely to affect the FDOC issued for the project. In this case, it is possible that the consultation process will result in changes to the FDOC. For example, USF&WS has indicated that it is extremely concerned about whether the use

of groundwater by the project could adversely affect an endangered species, the Shasta Crayfish. If USF&WS concludes that such impacts are likely, it may require a reduction in the use of water as a condition of the PSD permit. That, in turn, could affect the air emissions and air quality impacts created by the project, necessitating a re-visiting of the air quality issues at a later date. However, because many air quality issues are ready to proceed to hearing, staff recommends that the Three Mountain Committee hold the air quality hearings currently scheduled for June 21 and 22.

Staff believes that public health and noise should be addressed at the same time as air quality. Staff plans to file its testimony on these topics with its air quality testimony.

Topic Areas Not Ready to Proceed to Hearings

Soil and water resources and biological resources are currently in dispute and not ready to proceed to hearings. For a summary of the outstanding issues associated with these topics, please refer to staff's May 3, 2000 status report. At the May 10, 2000 workshop, staff and the applicant agreed to the following schedule to resolve these issues: Staff will file a critique of the applicant's water submittals and a summary of its analytical approach and remaining data needs on May 26, 2000. Within two weeks, the applicant will file comments on staff's report. This will be followed by a workshop on June 19, 2000. All parties will file direct testimony on these topics on July 6, 2000 and rebuttal testimony on July 18th. Hearings could commence on July 23, 2000.

Topic Areas Still Disputed, Requiring Adjudication

Staff does not know whether other parties believe that noise, air quality, public health, soil and water resources, biological resources, and alternatives are still disputed.

Based on the discussions at yesterday's workshop, Staff does not believe that it will dispute noise, air quality or public health with the applicant. However, we note that at the time of this filing, the air quality staff has had only one day to review the applicant's wood stove replacement proposal and road paving proposal and has not reviewed the FDOC. Hence, there is a small chance that staff will dispute the applicant's air quality proposal. We will inform the Committee of any information we have about this issue at the May 15 Prehearing Conference.

In addition, although the parties are working to resolve the current disputes about the water and biological resources impacts of the projects, staff believes that it is likely that it and other parties may dispute these issues with the applicant.

Witness Identification, etc.

Noise: The staff witness is Kisabuli, and his testimony was filed January 24, 2000. The staff witness concluded that there are no significant noise impacts resulting from the project. The witness's qualifications were included with the testimony when it was filed.

Air Quality: The staff witness is Tuan Ngo, and the testimony will be filed 16 days after the District issues the final DOC. Staff believes it is likely that it will conclude that there are no significant air quality impacts created by the project, but we will not reach a final conclusion on this topic until early next week. The witness's qualifications will be included with the testimony when it is filed.

Public Health: The staff witness is Obed Odoemelam, and his testimony was filed on January 24, 2000. The staff witness concluded that there are no significant health impacts resulting from the project. The witness's qualifications were included with the testimony. However, staff plans to file errata to reflect the fact that the applicant filed a revised health risk assessment on April 17, 2000. The errata will be filed concurrently with the air quality testimony.

Soil and Water Resources: The staff witnesses are Joe O Hagan, Linda Bond, Matt Layton, and Richard Sapuder. Staff is also investigating the possibility of presenting Timothy P. Rose of Lawrence Livermore Laboratory as a witness. Direct testimony will be filed on July 6 and rebuttal testimony will be filed on July 18, 2000. Staff does not know whether it will conclude that there are significant water resources impacts associated with the project. For a summary of the water resource issues that are currently unresolved, please read staff's May 3, 2000 status report. The witnesses qualifications will be included with the testimony when it is filed.

Biological Resources: The staff witness is Linda Spiegel. Direct testimony will be filed on July 6 and rebuttal testimony will be filed on July 18, 2000. Staff does not know whether it will conclude that there are significant biological impacts associated with the

project. For a summary of the biological resources issues that are currently unresolved, please read staff's May 3, 2000 status report. The witness's qualifications will be included with the testimony when it is filed.

Alternatives: The staff witness is Gary Walker, and the testimony will be filed concurrently with the soil and water resources testimony on July 6 and July 16. Staff believes that its testimony will identify and evaluate several alternatives to the project site. The witness's qualifications will be included with the testimony when it is filed.

Exhibits

Staff intends to file an analysis for each technical area. We are currently unaware of any other exhibits, but reserve the right to incorporate technical appendices that support our conclusions.

Comments on the Schedule

Staff has no additional comments on the schedule at this time.

Respectfully submitted,

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